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GENERAL MILITARY LAW

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Notes of Decisions

1. Historical

The Department of War [now Department of Defense] was created, with "a principal officer therein, to be called the Secretary for the Department of War

[now Secretary of Defense]", by Act Aug. 7, 1789, c. 7, 1 Stat. 49. In re Hennen, 1839, 38 U.S. 230, 259, 13 Pet. 230, 259, 10 L.Ed. 138. See, also, 1855, 7 Op.Atty.Gen. 453, 461.

§ 132. Seal


The Secretary of Defense shall have a seal for the Department of Defense. The design of the seal is subject to approval by the President. Judicial notice shall be taken of the seal.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 517.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 87-651, see 2156.

Library References

Armed Services  4.

C.J.S. Army and Navy §§ 1, 4 et seq.

§ 133. Secretary of Defense: appointment; powers and duties; delegation by

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 401 of title 50, he has authority, direction, and control over the Department of Defense.

(c) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with—

(1) a report from each military department on the expenditures, work, and accomplishments of that department;

(2) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under section 125 of this title;

(3) a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a re-

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view of the effectiveness of chapters 51, 337, 361, 363, 549, 573, 837, 861, and 863 of this title, as far as they apply to reserve officers; and

(4) such recommendations as he considers appropriate.

(d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 517.

Historical Note

Delegation of Functions. Functions of the President under various sections delegated to the Secretary of Defense, see Ex.Ord.No. 10621, July 1, 1955, 20 F.R. 4759, as amended by Ex.Ord.No. 11294, Aug. 4, 1966, 31 F.R. 10601; Ex.Ord.No. 10681, Feb. 27, 1956, 21 F.R. 1315; Ex.Ord.No. 11390, Jan. 22, 1968, 33 F.R. 841, all set out as notes under section 301 of Title 3, The President.

Emergency Preparedness Functions. Preparedness functions to the Secretary of Defense, see Parts 1, 4, and 30 of Ex.Ord.No. 11490, Oct. 28, 1969, 34 F.R. 17507, set out as a note under section 2292 of the Appendix to Title 50, War and National Defense.


Legislative History. For legislative history and purpose of Pub.L. 87-651, see 1962 U.S.Code Cong. and Adm.News, p. 2156.

Emergency Preparedness Functions. For assignment of certain emergency pre-

Cross References

Annual rate of basic compensation of Secretary, see section 5312 of Title 5, Government Organization and Employees.
National Security Agency employment, delegation of authority for terminating, notwithstanding subsec. (d) of this section, see section 833 of Title 50, War and National Defense.
Reports to Congressional Committees, policies and procedures on recall to active duty of Ready Reserve members, see section 673 of this title.

Library References

Armed Services  4. C.J.S. Army and Navy §§ 1, 4 et seq.

Code of Federal Regulations

Acceptance, designation and receipt of service of process, see 32 CFR 257.1 et seq.
Cost information reports, applicability and scope, see 32 CFR 250.1 et seq.
Equal Opportunity Program, policy of assuring compliance, see 32 CFR 191.1 et seq.
Foreign tax relief program, policy and scope, see 32 CFR 211.1 et seq.
Honorary awards to private citizens and organizations, policy and scope establishing, see 32 CFR 244.1 et seq.
Overseas Dependents School System, policy for organization, operation and administration, see 32 CFR 69.1 et seq.
Standards of conduct for military and civilian personnel, Navy Department, see 32 CFR 721.1 et seq.
Subscription service of directives, instructions and indexes to the public, see 32 CFR 280.1 et seq.
Trial by foreign courts, treatment in foreign prisons of U. S. military personnel, etc., policy and procedures, see 32 CFR 151.1 et seq.

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conscientious objector was a very close one, it could not be said that reserve member was not prejudiced by failure to follow the then prescribed procedure by having his commanding officer act on application, and it could only be speculated as to what basis for action was, case would be sent back to Department of Navy with directions for processing of application in accordance with new procedure in Department of Defense directive. Id.

Determination whether it is practicable and equitable under facts and circumstances of case to discharge conscientious objector, once enlisted or legally inducted into armed forces, is ultimately vested by this section, directive and regulation within discretion of the military itself. U. S. ex rel. O'Hare v. Eichstaedt, D.C. Cal.1967, 285 F.Supp. 476.

8. Industrial security clearance

Former section 171 et seq., of Title 5, and the Armed Service Procurement Act, section 2301 et seq., of this title together with section 798 of Title 18 making it a crime to communicate intelligence information to unauthorized persons and section 793 of Title 50 making it a crime for officer or employee of United States to communicate classified information to agents of foreign governments or Communist organizations do not authorize

Department of Defense to create industrial security clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on basis of fact determinations concerning their fitness for clearance made in proceedings in which they are denied traditional procedural safeguards of confrontation and cross-examination. *Greene v. McElroy*, App.D.C.1959, 79 S.Ct. 1400, 360 U.S. 474, 3 L.Ed.2d 1377.

9. Suits by or against Secretary

Where, reserve officer brought proceeding in federal district court against Secretary of War [now Secretary of Defense] claiming that certain of his Army records had been illegally altered with result that he was relieved from active duty, and Secretary of the Army was substituted as defendant after that officer replaced the former under the National Security Act of 1947, former sections 181-1 to 181-5 of Title 5, and, pending the litigation, officer's records were transferred to the Department of the Air Force, former section 1711 of Title 5, providing that in case of transfer, suit may be maintained by or against successor officer, only if motion is filed in court within 12 months after transfer takes effect applied. *Updegraff v. Pace*, 1951, 188 F.2d 646, 88 U.S.App.D.C. 202.

§ 134. Deputy Secretaries of Defense: appointment; powers and duties; precedence

(a) There are two Deputy Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as a Deputy Secretary of Defense within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretaries, in the order of precedence, designated by the President shall act for, and exercise the powers of, the Secretary when the Secretary is disabled or there is no Secretary of Defense.

(c) The Deputy Secretaries take precedence in the Department of Defense immediately after the Secretary.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 518, and amended Pub.L. 92-596, § 4(1), Oct. 27, 1972, 86 Stat. 1318.

Emergency Fund for Research, Development, Test, and Evaluation. Pub.L. 89-37, Title III, § 303, June 11, 1965, 79 Stat. 128, provided that: "No funds may be appropriated after June 30, 1966, to or for the use of any armed force of the United States for use as an emergency fund for research, development, test, and evaluation, or procurement or production

related thereto unless the appropriation of such funds has been authorized by legislation enacted after that date."

Legislative History. For legislative history and purpose of Pub.L. 87-651, see 1962 U.S.Code Cong. and Adm.News, p. 2456. See, also, Pub.L. 92-596, 1972 U.S. Code Cong. and Adm.News, p. 4938.

§ 136. Assistant Secretaries of Defense: appointment; powers and duties; precedence

(a) There are nine Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Health Affairs. He shall have as his principal duty the overall supervision of health affairs of the Department of Defense. One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of Defense. In addition, one of the Assistant Secretaries shall be the Comptroller of the Department of Defense and shall, subject to the authority, direction, and control of the Secretary—

(1) advise and assist the Secretary in performing such budgetary and fiscal functions and duties, and in exercising such budgetary and fiscal powers, as are needed to carry out the powers of the Secretary;

(2) supervise and direct the preparation of budget estimates of the Department of Defense;

(3) establish and supervise the execution of principles, policies, and procedures to be followed in connection with organizational and administrative matters relating to—

(A) the preparation and execution of budgets;

(B) fiscal, cost, operating, and capital property accounting;

(C) progress and statistical reporting; and

(D) internal audit;

(4) establish and supervise the execution of policies and procedures relating to the expenditure and collection of funds administered by the Department of Defense; and

(5) establish uniform terminologies, classifications, and procedures concerning matters covered by clauses (1)–(4).